

# Regulations on Single-Firm Conduct in JAPAN



Hideo NAKAJIMA  
Deputy Secretary General  
Japan Fair Trade Commission

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# Regulations on Single-Firm Conduct in Japan

## **Statutory Framework of the Antimonopoly Act**

### **1. Private Monopolization (Section 3)**

No entrepreneur shall effect private monopolization

### **2. Unfair Trade Practices (Section 19)**

No entrepreneur shall employ Unfair Trade Practices

# Statutory Framework

## Private Monopolization (1)

**Business activities, by which any entrepreneur excludes or controls the business activities of other entrepreneurs, thereby causing, contrary to the public interest, a substantial restraint of competition in any particular field of trade (Section 2)**

## Statutory Framework

### **Private Monopolization (2)**

**“Substantial restraint of competition”**

**A situation in which competition itself has significantly lessened and thereby a specific firm or firms can control the market by determining freely, to some extent, prices, qualities, volumes, and various other terms on its or their own volition**

**(December 9, 1953, Tokyo High Court)**

## Statutory Framework

# Private Monopolization (3)

## Measures against Private Monopolization

### 1. Administrative measures (JFTC)

- 1 ) An order of elimination measures  
(= a cease and desist order)
- 2 ) [ For controlling type of Private Monopolization]  
An order of surcharge payment

### 2. Criminal Sanction

# Statutory Framework

## Unfair Trade Practices (1)

**Any act which tends to impede fair competition and which is designated by the Fair Trade Commission (Section 2 (9))**

### (Examples)

Unjust Refusal to deal

Unjust dealings on restrictive terms

Unjustly discriminating prices

Unjust interferences with competitor's transaction

Customer inducement by deceptive/ unjust way

Unjust dealings on exclusive terms

Unjust low sales prices

Unjust tie-in sales

Abuse of dominant bargaining position

# Statutory Framework

## Unfair Trade Practices (2)

### Measures against Unfair Trade Practices

**An order of elimination measures  
(= a cease and desist order) issued by the JFTC**

# Enforcement of Regulations on Single-Firm Conduct

**(Table) Administrative dispositions by the JFTC**

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Cartels						
Price cartels	1	3	2	3	2	4
Bid-riggings	10	33	30	14	22	13
Others	1	0	1	0	0	0
Private Monopolization	0	0	0	1	2	0
Unfair Trade Practices	6	2	3	7	8	2
Others	0	0	1	0	1	0
Total	18	38	37	25	35	19



# Enforcement – Private Monopolization

## Case 1: Paramount Bed Co., Ltd. (1998)

- Market on the hospital beds ordered by the Tokyo Metropolitan Gov.
- Paramount ---- around 90% share in the market

### <Paramount's conducts>

1. Leading the procurement officials to craft tender specifications applicable only to its products
2. Controlling the activities of bid participants by designating a successful bidder and indicating bidding prices

## Enforcement – Private Monopolization

### **Case 2: Hokkaido Shimbun Press (2000)**

- Market on the daily newspaper in the Hakodate area  
**Hokkaido Shimbun** --- majority of general daily newspaper publications  
**Hakodate Shimbun Press** --- going to enter the market

#### **<Hokkaido Shimbun's conducts>**

1. Applying for trademark registration regarding nine mastheads
2. Soliciting Jiji Press not to deliver its articles to Hakodate Shimbun
3. Halving the prices of putting advertisement for SMEs in local areas

## Enforcement – Unfair Trade Practices

**(For determining whether any specific single-firm conduct falls under Unfair Trade Practices, or tends to impede fair competition)**

**< 1 >**

- **Various factors including the structure and development of the relevant market, the differences of the supply costs, market position of the concerned retailer, and subjective intentions for setting price differentials would need to be taken into accounts in a comprehensive way. (April 27, 2005, Tokyo High Court)**

## Enforcement – Unfair Trade Practices

**(For determining whether any specific single-firm conduct falls under Unfair Trade Practices, or tends to impede fair competition)**

**< 2 >**

- **Those relevant factors such as intentions, objectives, and details of the concerned conduct, actual competitive relationship, and situations of the market should be taken into account in a comprehensive way (December 14, 1989, Supreme Court)**

## Case 3: Microsoft KK (1998)

- **Market for word processors**

**MSKK** — Top market share for spreadsheet software

c.f.) market for word processor / schedule management software

### **<MSKK's conducts>**

1. Making PC manufacturers preinstall both Excel and Word against their requests of preinstalling only Excels
2. Making PC manufacturers preinstall Outlook in addition to Excel and Word against their will

# Discussion in the AMA Study Group

## AMA Study Group

Established in Cabinet Office in 2005 as a private discussion body under Chief Cabinet Secretary, based on a supplementary provision of the 2005 Amendments to the AMA, for further review of the AMA

## Issue related to single-firm conduct regulations

Scope of unlawful conducts subject to administrative surcharges